

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EMMETT W. CALDWELL,)	
)	
Plaintiff,)	
)	
v.)	1:09CV208
)	
CITY OF DURHAM, et al.,)	
)	
Defendant(s).)	

ORDER ADOPTING RECOMMENDATION

The recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on March 30, 2009, was served on the parties in this action. Plaintiff filed a motion to reconsider [Docket No. 5] and amended complaint [Docket No. 6] on April 6, 2009, which will be construed as an objection to the recommendation and a proposed amended complaint.

The Court has reviewed the Magistrate Judge's recommendation and has made a de novo determination which is in accordance with the Magistrate Judge's report. The Court adopts the Magistrate Judge's recommendation. Plaintiff's Amended Complaint remains subject to a review of frivolity and fails to add any new or different information which would alter the Court's determination that the action is frivolous; thus, amendment of the complaint would be futile and is not allowed. 28 U.S.C. § 1915(e)(2); see also Moniz v. Hines, 92 F. App'x 208, 212 (6th Cir. 2004) ("[A] district court may not permit a plaintiff to amend his complaint to defeat dismissal

under 28 U.S.C. §§ 1915(e)(2).”).

This the 29th day of March, 2010

\S\ N. Carlton Tilley, Jr. _____

Senior United States District Judge